

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A.NO.

04 11712 NMG

PATRICIA KAPHAEM,
Plaintiff

vs.

JOHN R. WALTERS,
and SONNY PETERSON
TRUCKING, INC.
Defendants

COMPLAINT

MAGISTRATE JUDGE JLA

RECEIPT # 57222
AMOUNT \$ 150.00
SUMMONS ISSUED 2
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. M.P.
DATE 8/4/04

PARTIES

1. The Plaintiff, Patricia Kaphacm is a natural person and citizen of the Commonwealth of Massachusetts who resides at 63 Kingham Street, Lakeville, Plymouth County, MA.
2. The Defendant, John R. Walters, is a natural person and citizen of the State of Minnesota who resides at 1014 Lindbergh Drive South, Little Falls, Minnesota.
3. The Defendant, Sonny Peterson Trucking, Inc. is a Minnesota Corporation with a usual place of business at P.O. Box 276, Swanville, Minnesota.

JURISDICTION

1. Jurisdiction is based on 28 U.S. §1332 as there is a diversity of citizenship of the parties. The amount in controversy exceeds, exclusive of interest and costs, fifty thousand dollars (\$50,000.00).

COUNT I

1. Patricia Kaphaem is an individual who resides at 63 Kingman Street, Lakeville, Plymouth County, MA.

2. John R. Walters an individual who, at all times material to this Complaint, resided at 1014 Lindbergh Drive South, Little Falls, Minnesota.
3. On or about August 7, 2001 Patricia Kaphaem was operating a vehicle owned by one William F. Kaphaem, Jr., on School Street and Route 140 northbound, Mansfield, Massachusetts.
4. At the same time and place, John R. Walters operated a motor vehicle owned by Sonny Peterson Trucking, Inc. in a negligent manner causing it to collide with the motor vehicle then and there operated by Patricia Kaphaem.
5. As a result of said negligent operation of a motor vehicle by said John R. Walters, Patricia Kaphaem was seriously injured, incurred great medical expense, and was disabled and otherwise injured.

WHEREFORE, Plaintiff, Patricia Kaphaem, demands judgment against the Defendant, John R. Walters, in an amount deemed appropriate by this court plus costs, interest, and attorney's fees.

COUNT II

1. The Plaintiff, Patricia Kaphaem, repeats and realleges paragraphs one through five of COUNT I and makes them part of COUNT II as is fully set forth herein.
2. The Defendant, Sonny Peterson Trucking, Inc., at all times material to this complaint, was a Minnesota Corporation with a usual place of business at P.O. Box 276, Swanville, Minnesota.
3. Sonny Peterson Trucking, Inc., at all times material to this Complaint, was the registered owner of the motor vehicle operated by the Co-Defendant, John R. Walters.

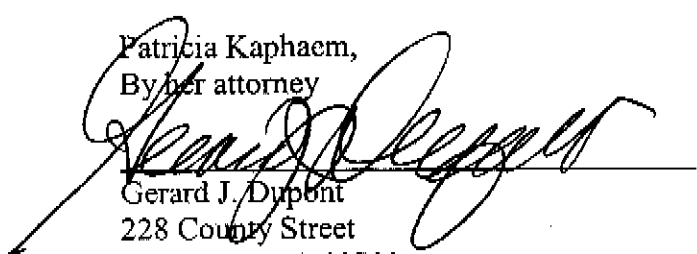
4. On or about August 7, 2001, in Mansfield, Massachusetts, the Defendant, Sonny Peterson Trucking, Inc., was the owner of a vehicle negligently operated by John R. Walters, and an entity for whose conduct Sonny Peterson Trucking, Inc. was responsible for. Said negligent operation resulted in a motor vehicle collision injuring your Plaintiff, Patricia Kaphaem.

5. M.G.L. c.231 Sec. 85A states:

"In all actions to recovery damages for injuries to the person or to property or for the death of a person, arising out of an accident or collision in which a motor vehicle was involved, evidence that at the time of such accident or collision it was registered in the name of the Defendant as owner shall be prima facie evidence that it was then being operated by and under the control of a person for whose conduct the Defendant was legally responsible, and absence of such responsibility shall be affirmative defense to be set up in the answer and proved by the Defendant."

WHEREFORE, the Plaintiff, Patricia Kaphaem, demands judgment against the Defendant, Sonny Peterson Trucking, Inc., in an amount deemed appropriate to the Court together with costs, interest, and attorneys fees.

Patricia Kaphaem,
By her attorney



Gerard J. Dupont
228 County Street
Attleboro, MA 02703
BBO# 138900
(508) 222-7997

Dated: July 26, 2004

I. (a) PLAINTIFFS

PATRICIA KAPHAEN

DEFENDANTS

JOHN R. WALTERS AND SONNY PETERSON
TRUCKING, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF PLYMOUTH
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, LIST LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

LAW OFFICE OF GERARD J. DUPONT
GERARD J. DUPONT
228 COUNTY STREET
ATTLEBORO, MA 02703

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 185 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 342 Personal Injury - Med. Malpractice <input type="checkbox"/> 345 Personal Injury - Product Liability <input type="checkbox"/> 348 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 340 Other Personal Property Damage <input type="checkbox"/> 345 Property Damage - Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 781 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 841 HIA (1395m) <input type="checkbox"/> 842 Black Lung (923) <input type="checkbox"/> 843 DWC/DWV (405(g)) <input type="checkbox"/> 844 SSD Title XVI <input type="checkbox"/> 845 RS (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7608	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 890 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 890 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

JURISDICTION IS BASED ON 28 U.S. SECTION 1332

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$250,000.00 CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See Instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

JULY 22, 2004

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) PATRICIA KAPHAEM v. JOHN R. WALTERS
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 185, 368, 400, 440, 441-444, 540, 550, 555, 625, 610, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
NONE
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME GERARD J. DUPONT
- ADDRESS 228 COUNTY STREET, ATTLEBORO, MA 02703
- TELEPHONE NO. (508) 222-7997